



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

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Medley
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CONFIDENTIAL

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Via Federal Express

May 20, 1991

Adam M. Kushner, Esq.
c/o Helen Kang, Esq.
Department of Justice
301 Howard Street
Suite 870
San Francisco, CA 94105

CONFIDENTIAL

Lawrence Groner, Esq.
Mail Code LE-134S
OE-Superfund
U.S. EPA
401 M Street, S.W.
Washington, D.C. 20460

Re: Medley Farm Site, Gaffney, South Carolina

Dear Adam and Larry:

Enclosed as you each requested is my second draft of the proposed Special Notice Letter and the proposed Consent Decree (without attachments) for the Medley Farm Superfund Site. For your convenience, I have marked the changes, additions and deletions from my first draft of these documents.

I intend to send the special notice letter package, including the draft Consent Decree, to the PRPs by May 29, 1991, as I will be out of the office on May 30th and 31st. I would appreciate receiving your final comments by Monday, May 27th so that I can finalize the documents. It is important that we stick to this schedule so that we can meet the Region IV program office's commitment of having a signed Consent Decree by the end of the fiscal year.

Also enclosed in Larry's package as he requested is a copy of the comments received from the steering committee on the proposed plan for the Site, along with EPA's response to such comments. I will send you each a copy of the Record of Decision when it is final.

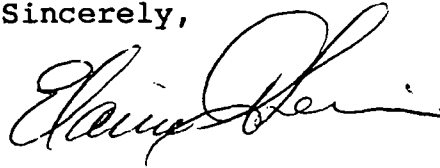
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Messrs. Kushner and Groner
Page 2
May 20, 1991

Please do not hesitate to contact me at FTS 257-2641 if you need any further documents or information. I look forward to hearing from you both at your earliest convenience. Thank you for your help on this case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elaine Levine".

Elaine G. Levine
Assistant Regional Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

2nd Draft
E G Levine, CRC
Region 4
5/20/91

4RC

GENERAL AND SPECIAL NOTICE LETTER
FOR REMEDIAL DESIGN/REMEDIAL ACTION (RD/RA)
URGENT LEGAL MATTER--PROMPT REPLY REQUESTED
CERTIFIED MAIL--RETURN RECEIPT REQUESTED

Milliken & Company
P.O. Box 817
Inman, SC 29349

RE: The Medley Farm Site (the "Site")
Gaffney, South Carolina

Dear Sir or Madam:

This letter notifies you that Milliken Company may be a liable party within the meaning of and as set forth in Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), as amended, with respect to the above-referenced Site.

As the enclosed Record of Decision details, the United States Environmental Protection Agency ("EPA") has documented the release or threatened release of hazardous substances, pollutants and contaminants at the above-referenced Site. EPA is considering spending public funds to abate the releases or threatened releases of hazardous substances, pollutants or contaminants by undertaking the response actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, unless the Agency determines that such action will be done properly by a potentially responsible party (a "PRP"). By this letter, EPA is notifying PRPs of the opportunity to perform the response activities outlined below.

In addition, this letter serves three other purposes: (1) to demand reimbursement of response costs that have been incurred at the Site, including interest thereon; (2) to notify you that a 60-day period of formal negotiations with EPA automatically begins upon receipt of this notice, which EPA has deemed to be seven calendar days from the date of this letter; and (3) to provide general and site-specific documentation in order to assist you in the negotiation process. Such documentation includes a draft Consent Decree, a copy of the Record of Decision, and Scope of Work.

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NOTICE OF POTENTIAL LIABILITY

PRPs under CERCLA include: the current owners or operators of the Site; persons who at the time of disposal of hazardous substances owned or operated the facility; persons who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for disposal or treatment of hazardous substances; and persons who accept or accepted any hazardous substance for transport to disposal facilities and selected such facilities.

Under CERCLA and other laws, potentially responsible parties may be liable for all funds expended by the United States government to take necessary corrective action at a site, including planning, investigation, cleanup and enforcement activities associated with a site. In addition, potentially responsible parties may be required to pay damages for injury to natural resources or for their destruction or loss, together with the cost of assessing such damages.

Based on information received during litigation and the investigation of this Site, EPA believes that Milliken & Company is a generator of hazardous substances at the Site and a responsible party under Section 107 of CERCLA, 42 U.S.C. § 9607(a). Before the government undertakes further response actions, EPA requests that the PRPs voluntarily perform the work necessary to prevent any releases or threatened releases of hazardous substances from the Site.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

EPA encourages good faith negotiations between Milliken & Company and EPA and between Milliken & Company and other PRPs regarding the response actions required at the Site. In accordance with Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), EPA is providing as Enclosure A to this letter, a PRP information package which includes a list of names and addresses of other PRPs receiving this notification.

EPA has determined that a period of negotiation would facilitate settlement between EPA and the PRPs. Pursuant to Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), a 60-day moratorium on certain EPA response activities at the Site will begin seven calendar days from the date of this letter. During this 60-day period, the PRPs, including Milliken & Company, are invited to participate in

formal negotiations with EPA and to negotiate a settlement providing for the PRPs to conduct or finance the Remedial Design/Remedial Action ("RD/RA") at this Site. The 60-day negotiation period will be continued for an additional 60 days if, within the initial 60-day period, the PRPs provide EPA with a good faith offer to conduct or finance the RD/RA. If a settlement is reached between EPA and the PRPs within the 120 day moratorium period, the settlement will be embodied in a Consent Decree for the RD/RA.

Pursuant to Section 122(e)(4) of CERCLA, 42 U.S.C. § 9622(e)(4), if a good faith offer is not received within the initial 60-day notice period, EPA may take appropriate action at the Site. Moreover, EPA reserves the right to take action at any time at the Site in the event that a significant threat requiring EPA's immediate response arises.

A good faith offer is a written proposal which demonstrates the PRPs' qualifications and willingness to conduct or finance the RD/RA. A good faith offer to conduct or finance the RD/RA must include the following elements:

1. A statement of willingness by the PRPs to conduct or finance the RD/RA which is consistent with the draft Consent Decree, Scope of Work, and Record of Decision and which provides a sufficient basis for further negotiations.
2. A response to the terms of the draft Consent Decree and enclosed Scope of Work.
3. A demonstration of the PRPs' technical capability to carry out the RD/RA including the identification of the firm(s) that would be used to conduct the work or a description of the process that will be used to select the firm(s).
4. A demonstration of the PRPs' capability and willingness to finance the RD/RA.
5. A statement of the PRPs' willingness to reimburse EPA for costs incurred in overseeing the PRPs' conduct of the RD/RA.
6. The name, address and telephone number of the party or steering committee who will represent the PRPs in negotiations.

ADMINISTRATIVE RECORD

Pursuant to Section 113(k) of CERCLA, EPA has compiled the administrative record which contains documents that form the basis of EPA's decision on the selection of a response action for the Site. This administrative record is open to the public for inspection and comment at the Cherokee County Public Library, 300 E. Rutledge Street, Gaffney, South Carolina and at the EPA Library, 345 Courtland Street, N.E., Atlanta, Georgia

DEMAND FOR PAYMENT

In accordance with CERCLA, EPA has already undertaken certain actions and incurred costs in response to conditions at this Site. Those response actions include oversight of the conduct of the Remedial Investigation/Feasibility Study (the "RI/FS"). The cost to date of the response actions performed at the Site through EPA funding which have not been reimbursed by the PRPs is approximately \$_____. Pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, EPA hereby demands payment of the above-stated amount, together with any and all interest recoverable by law.

As stated above, EPA anticipates expending additional funds to conduct the RD/RA at this Site. Whether EPA funds the entire RD/RA or simply incurs costs in overseeing the parties conducting these response activities, you are potentially liable for these expenditures plus interest.

PRP STEERING COMMITTEE

EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. Establishing a manageable group is critical for successful negotiations with EPA. Alternatively, EPA encourages each PRP to select one person from its company or organization who will represent its interests. Certain of the PRPs at this Site formed a steering committee in connection with the conduct of the Remedial Investigation/Feasibility Study for the Site. This steering committee has been chaired by the law firm of King & Spalding, Atlanta, Georgia.

PRP RESPONSE AND EPA CONTACT PERSON

Section 122(e) of CERCLA, 42 U.S.C. § 9622(e) provides that: Milliken & Company has 60 days to make a good faith offer to EPA. However, you are requested to contact EPA in writing within twenty (20) calendar days of the date of this letter to indicate whether you wish to participate in negotiations to undertake or finance the RD/RA at this Site.

You may respond individually or through a steering committee if such a committee has been formed. Your letter should include the appropriate person's name, address and telephone number for further contact with you.

If EPA does not receive a timely response, EPA will assume that Milliken & Company does not wish to negotiate a resolution of its liabilities in connection with the response, and that Milliken & Company has declined any involvement in performing these response activities. Milliken & Company may be held liable hereafter under Section 107 of CERCLA, 42 U.S.C. § 9607, for the cost of the response actions which EPA performs at the Site and for any damages to natural resources.

Your response to this notice letter should be sent to:

Elaine G. Levine
Assistant Regional Counsel
U.S. Environmental Protection Agency
345 Courtland Street, N.E.
Atlanta, Georgia 30365
404/347-2641

If you have any legal questions pertaining to this matter, please direct them to Ms. Levine. Questions of a technical nature only should be directed to Ralph Howard or Jon Borrholm, Remedial Project Managers, at 404/347-7791.

Due to the seriousness of the problem at the Site and the legal ramifications of your failure to respond promptly, EPA strongly encourages you to give this matter your immediate attention and to respond within the time specified above.

Thank you for your cooperation in this matter.

Sincerely,

Donald J. Guinyard, Acting Director
Waste Management Division

Enclosures

cc: [Insert State Contact]

Adam Kushner, Esq.
U.S. Department of Justice

Mr. James Lee
Regional Environmental Officer
U.S. Department of the Interior

[insert state natural resources contact]

bcc: Lawrence Groner, Esq.
Office of Enforcement
EPA Headquarters

Alicia Corley
Office of Waste Programs Enforcement

Region 4
Internal Draft #2
E. G. Levine, ORC
5/20/91

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ABCO INDUSTRIES, LTD.,
BASF CORPORATION, COLONIAL
HEIGHTS PACKAGING, INC.,
ETHOX CHEMICALS, INC.,
EVODE-TANNER INDUSTRIES,
INC., MCKESSON CORPORATION,
CLYDE MEDLEY, RALPH C. MEDLEY,
MILLIKEN & COMPANY, NATIONAL
STARCH AND CHEMICAL
CORPORATION, SPECIALTY
INDUSTRIAL PRODUCTS, INC.,
AND UNISPHERE CHEMICAL
CORPORATION,

Defendants.

CIVIL ACTION NO.

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CONSENT DECREE

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"U.S."

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I. BACKGROUND

A. The United States of America (the "United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Medley Farm Superfund Site (the "Site") in Gaffney, Cherokee County, South Carolina, together with accrued interest; (2) performance of studies and response work by the Defendants at the Site in conformity with the Record of Decision (as defined below) and the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (the "NCP"); (3) a declaration of Defendants' liability for future response costs; and (4) such other relief as the Court deems appropriate. ^{deleted: "further"}
^{deleted: "funds"}

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of South Carolina (the "State") on May ___, 1991 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for

the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this settlement.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of the Interior and the state natural resource trustees on May ___, 1991 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal and state trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

E. The Defendants that have entered into this Consent Decree (the "Settling Defendants") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 14, 1990, 55 Fed. Reg. 9701;

G. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, certain of the Settling Defendants commenced on January 29, 1988, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430;

deleted: "Such"
H. The Settling Defendants referred to in Paragraph G
above completed a Remedial Investigation ("RI") Report on
May _____, 1991, and a Feasibility Study ("FS") Report on
deleted: "April" May _____, 1991;

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617,
EPA published notice of the proposed plan for remedial action on
February 12, 1991, in the Greenville News, which is a major
local newspaper of general circulation. EPA provided an
opportunity for written and oral comments from the public on the
proposed remedial action. A copy of the transcript of the
public meeting is available to the public as part of the
administrative record upon which the Regional Administrator
based the selection of the response action.

J. The decision by EPA on the remedial action to be
implemented at the Site is embodied in a final Record of
Decision (the "ROD"), executed on ^{deleted: "April"} May __, 1991, on which the
State had a reasonable opportunity to review and comment and on
which the State has given its concurrence. The ROD includes a
responsiveness summary to the public comments. Notice of the
final plan was published on _____, 1991, in accordance
with Section 117(b) of CERCLA.

K. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Defendants.

moved { L. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C § 9613(j), the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of this Court or to venue in this

District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors

and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period

of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"DHEC" shall mean the South Carolina Department of Health and Environmental Control and any successor departments or agencies of the State of South Carolina.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in overseeing the Work, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, VIII, and X, and the costs of reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing or enforcing this Consent Decree. Future Response Costs shall also include all costs, including direct and indirect costs, incurred by the United States in connection with the Site between October 1, 1990 and the effective date of this Consent Decree and all interest on the Past Response Costs from October 1, 1990 to the date of payment of the Past Response Costs.

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"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Scope of Work ("SOW").

"Owner Settling Defendant" shall mean the Settling Defendant Ralph C. Medley.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States and the Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs and interest, that the United States incurred with regard to the Site on and prior to September 30, 1990.

"Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in the ROD and the SOW.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on May __, 1991, by the Regional Administrator, EPA Region IV, and all attachments thereto.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the final plans and specifications submitted by the Settling Defendants pursuant to the Remedial Design Work Plan and approved by EPA.

"Remedial Action Work Plan" shall mean the document submitted by the Settling Defendants pursuant to Paragraph 12.a of this Consent Decree and described more fully in Paragraph 12.b.

"Remedial Design" shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to, the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document submitted by the Settling Defendants pursuant to Paragraph 11.a of this Consent Decree and described more fully in Paragraph 11.b.

"Scope of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with Section XXXII (Modification) of this Consent Decree.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean those Parties identified in Appendix D.

"Site" shall mean the Medley Farm Superfund Site, encompassing approximately seven acres, located off of Burnt Gin Road (Highway 72), approximately six miles south of the City of Gaffney, South Carolina, in Cherokee County, South Carolina and depicted more particularly on the map attached as Appendix C.

"State" shall mean the State of South Carolina.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Defendants to supervise and direct implementation of the Work under this Consent Decree. .

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"and approved by
EPA pursuant to
Paragraph 10"

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) ^{deleted: "and"} any pollutant or contamination under Section 101(33) of CERCLA, 42 U.S.C. § 9603(27); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 9603(27).

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objective of the Parties in entering into this Consent Decree is to protect public health and welfare and the environment from releases or threatened releases of Waste Material from the Site. This objective shall be accomplished by the design and implementation of the Remedial Action and Operation & Maintenance at the Site by the Settling Defendants. ^{deleted: "It is also... Site."}

6. Commitments by Settling Defendants

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, including, but not limited to, the SOW and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also

reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency of one or more of the Settling Defendants, or the failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

7. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the RSD and the SOW.

The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP. Deleted: "The US has determined that"

8. Permits

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.5 of the NCP, no permit shall be required for any portion of the Work conducted entirely on the

Site. Where any portion of the work requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice of Obligations to Successors-in-Title

a. Within 15 days after the entry of this Consent Decree, the Owner Settling Defendant shall record a certified copy of this Consent Decree with the Registry of Deeds or other appropriate office, of Cherokee County, State of South Carolina. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and any lien retained by the United States and shall reference the recorded location of the Consent Decree and

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conveyance
for"

any restrictions applicable to the property under this Consent Decree.

b. The obligations of the Owner Settling Defendant with respect to the provision of access under Section X (Access) shall be binding upon such Settling Defendant and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, Owner Settling Defendant shall record at the Registry of Deeds, or other appropriate office where land ownership and transfer records are maintained for the property, a notice of obligation to provide access under Section X (Access) and related covenants. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

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"Deed"

c. The Owner Settling Defendant and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree has been given to the grantee. In the event of any such conveyance, the Settling Defendants' obligations under this Consent Decree,

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"Owner"

including their obligations to provide or secure access pursuant to Section X, shall continue to be met by the ^{Settling} ~~deleted: "Owner"~~ Defendants. In addition, if the United States approves, the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of any of the Settling Defendants to comply with the Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

10. Selection of Supervising Contractor

a. All aspects of the Work to be performed by Settling Defendants pursuant to this Section VI (Performance of the Work by Settling Defendants), Section VII (Additional Response Actions), Section VIII ^{deleted: "U.S."} (EPA Periodic Review), and Section IX (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 10 days after the lodging ^{deleted: "entry"} of this Consent Decree, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give notice to EPA and

shall obtain an authorization to proceed ^{deleted: "approval?"} from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. ^{Deleted: whose section on approval} Settling Defendants shall ^{deleted: "within 30 days"} submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to Settling Defendants within thirty days of receipt of EPA's disapproval of the contractor previously proposed. EPA will thereafter provide written notice to Settling Defendants of the names of the contractor(s) that it disapproves and authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's designation of approved contractors.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval ^{deleted: "of the names on the list"} as provided in this Section ^{deleted: "Paragraph"} and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) hereof.

11. Remedial Design.

a. Within 60 days after ^{deleted: "the effective date of this CD"} EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Settling Defendants shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site (the "Remedial Design Work Plan"). The Remedial Design Work Plan shall provide a detailed approach for designing the remedy set forth in the ROD in accordance with the SOW and, upon its approval by EPA, shall be incorporated into and become enforceable under this Consent Decree. In addition, within 60 days after ^{deleted: "effective date of this CD"} issuance of the authorization to proceed, the Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) a remedial design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with Section IX (Quality Assurance, Sampling and Data Analysis); (2) the Remedial Design Project Operations

Plan (RD POP)); (3) a treatability study; (4) a preliminary design submittal; (5) an intermediate design submittal; and (6) a prefinal/final design submittal. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Design Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendants shall implement the Remedial Design Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field sampling; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) requiring specifications in outline form; and (7) preliminary construction schedule.

e. The intermediate design submittal, if required by EPA or if independently submitted by the Settling Defendants, shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.

f. The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (4) Contingency Plan.

12. Remedial Action.

a. Within 45 days after the approval of the final design submittal, Settling Defendants shall submit to EPA and the State, a work plan for the performance of the Remedial Action at the Site (the "Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction of the remedy, in accordance with the SOW, as set forth in the design plans and specifications in the approved final design submittal. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field activities

required by the Remedial Action Work Plan. Such Health and Safety Plan shall conform to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plan shall include the following: (1) the schedule for completion of the Remedial Action; (2) the method for selection of the contractor; (3) a schedule for developing and submitting other required Remedial Action plans (i.e., the Remedial Action Sampling and Analysis Plan (RA SAP); (4) a groundwater monitoring plan; (5) methods for satisfying permitting requirements; (6) a methodology for implementation of the Operation and Maintenance Plan; (7) a methodology for implementation of the Contingency Plan; (8) a Construction Quality Assurance Project Plan (CQAPP), which shall detail the approach to quality assurance during construction activities at the Site, shall specify an independent quality assurance team ("IQAT"), as described in the SOW, to conduct a quality assurance program during the construction phase of the project; (9) a construction quality control plan (by constructor); and (10) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks

identified in the final design submittal and shall identify the initial formulation of the Settling Defendants' Remedial Action Project Team (which Team shall include the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendants shall not commence physical on-site activities at the Site prior to approval of the Remedial Action Work Plan.

13. The Work performed by the Settling Defendants pursuant to this Consent Decree shall, at a minimum, include the obligation to achieve the Performance Standards.

14. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with

work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards. Settling Defendants' compliance with the work requirements shall not foreclose Plaintiff from seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, achieving the applicable Performance Standards.

15. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, these notification requirements shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of any major

changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 15.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. ADDITIONAL RESPONSE ACTIONS

16. In the event that EPA or the Settling Defendants determine that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD, notification of such additional response actions shall be provided to the Project Coordinator for the other party.

17. Within 30 days of receipt of notice from EPA pursuant to Paragraph 16 that additional response actions are necessary, or within such longer time as may be specified by EPA, Settling Defendants shall submit for approval by EPA, after reasonable opportunity for review and comment by the State, a work plan for the additional response actions. The plan shall conform to the applicable requirements of Paragraphs 11 and 12. Upon approval of the plan pursuant to Section XII (Submissions Requiring

Agency Approval), Settling Defendants shall implement the plan for additional response actions in accordance with the schedule contained therein.

18. Any additional response actions that Settling Defendants propose ^{deleted: "determine"} are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD shall be subject to approval by EPA, after reasonable opportunity for review and comment by the State, and, if authorized by EPA, shall be completed by Settling Defendants in accordance with plans, specifications and schedules approved by EPA pursuant to Section XII (Submissions Requiring Agency Approval).

19. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD. Such disputes shall be resolved pursuant to Paragraphs 63-66 of this Consent Decree.

VIII. EPA PERIODIC REVIEW

20. a. Settling Defendants shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c). Prior to Certification of Completion of the Work pursuant to Section XV (Certification

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of Completion) hereof, Settling Defendants shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA, in order to permit EPA to conduct the review of the Site required by Section 121(c) of CERCLA. If, upon such review, EPA determines prior to the Certification of the Completion of the Work pursuant to Section XV hereof that further response action in accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. § 9604 or 9606, is appropriate at the Site, Settling Defendants shall implement such action. Any dispute regarding the necessity for or scope of such further response action shall be subject to judicial review pursuant to the dispute resolution provisions in Section XX hereof to the extent permitted by, and in accordance with, Section 113 of CERCLA, 42 U.S.C. § 9613.

21. If required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or 9617, Settling Defendants and the public shall be provided with an opportunity to confer with EPA on any additional activities proposed by EPA during the five (5) year review process and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region IV, or his/her delegate, shall determine in writing if further actions are appropriate.

"activities"

22. If the Regional Administrator, EPA Region IV, or his/her delegate, determines that information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), indicates that the Remedial Action is not protective of human health and the environment, the Settling Defendants shall undertake any further response actions EPA has determined are appropriate, unless their liability for such further response actions is barred by the Covenant Not to Sue set forth in Section XXII. Settling Defendants shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA. The Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) EPA's determination that the remedial action is not protective of human health and the environment, (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with law, or (3) EPA's determination that the Settling Defendants' liability for the further response actions requested is reserved in Paragraphs 80, 81 or 83 or otherwise not barred by the Covenant Not to Sue set forth in Section XXII.

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IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

23. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all ^{deleted: "environmental"} treatability, design, compliance and monitoring samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, Guidance (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and the Region IV Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual, and subsequent amendments to such guidelines upon notification to Settling Defendants of such amendments by EPA. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") ^{deleted: "to EPA & the State"} that is consistent with the SOW, the NCP, the above-identified guidance and all other applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall assure that EPA personnel and

EPA's authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall assure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories utilized by them for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis," and the "Contract Lab Program Statement of Work for Inorganic Analysis," dated February 1988, and any amendments made thereto during the course of implementing this Decree. Settling Defendants shall ensure that all laboratories used by them for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

24. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Defendants shall notify EPA not less than 28 days in advance of any sample collection activity. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Defendants to take split or duplicate samples of

any samples it takes as part of the Plaintiff's oversight of the Settling Defendants' implementation of the Work.

25. Within 7 days of a request by EPA, Settling Defendants shall provide EPA with 3 copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree.

26. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

X. ACCESS

27. Commencing upon the date of lodging of this Consent Decree, the Settling Defendants agree that the United States and its representatives, including EPA and its contractors, shall have access at all times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Settling Defendants, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

a. Monitoring the Work;

b. Verifying any data or information submitted to the United States;

c. Conducting investigations relating to contamination at or near the Site;

d. Obtaining samples

e. Assessing the need for, planning, or implementing additional response actions at or near the Site;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents; and

g. Assessing Settling Defendants' compliance with this Consent Decree.

28. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for Settling Defendants, as well as for the United States, the State and their representatives, including, but not limited to, EPA and its contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within 45 days of the date of entry of this Consent Decree, or within 45 days of

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the date EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the United States, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access. Settling Defendants shall reimburse the United States, in accordance with the procedures set forth in Section XVII (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access, including, but not limited to, attorneys fees and any just compensation.

29. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

XI. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA one copy and to the State one copy of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants; or

their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree to have been completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next month. Settling Defendants shall submit these progress reports to EPA and the State by the 10th day of every month following the entry of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 48.b of Section XV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

31. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress reports for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

32. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), Settling Defendants shall within 24 hours of the on-set of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region IV, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304. Within 20 days of the onset of such an event, Settling Defendants shall furnish to Plaintiff a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

33. Settling Defendants shall submit to the Court, EPA and the State each year, within 30 days of the anniversary of the entry of the Consent Decree, a report setting forth the status of the Work, which shall at a minimum include a statement of major milestones accomplished in the preceding year, a statement of tasks remaining to be accomplished, and a schedule for implementation of the remaining Work. Settling Defendants shall submit three copies of the report to EPA and three copies of the report to the State.

34. Settling Defendants shall submit the number of copies specified in the SOW of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit 3 copies of all such plans, reports and data to the State.

35. All reports and other documents submitted by Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) ^{deleted: "direct... Submission;"} disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 36(a), (b) or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to the Settling Defendants' right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 36(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties as provided in Section XXI.

38. a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), ^{deleted: "or a notice requiring a modification"} Settling Defendants shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for

approval. Any stipulated penalties applicable to the submission, as provided in Section XXI, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 39.

b. Notwithstanding the receipt of notice of disapproval pursuant to Paragraph 36(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

39. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report or other item.

revised { Settling Defendants shall implement any such plan, report, or item as amended or developed by EPA, subject only to their right to invoke procedures set forth in Section XX (Dispute Resolution).

40. If upon ^{deleted: "the first"} resubmission ^{deleted: "or upon any subsequent resubmission, the"} a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed ^U to submit

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such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution) and ^{deleted: "this Court"} EPA's action is overturned pursuant to that Section. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXI (Stipulated Penalties). Deleted: "Implementation ... penalties"

41. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or ^{deleted: "deemed ... as"} modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XIII. PROJECT COORDINATORS

42. Within 20 days of lodging this Consent Decree, Settling Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project

Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be acting as an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

43. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response actions when s/he determines that conditions at the Site constitute an

emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

44. At EPA's option, EPA's Project Coordinator and the Settling Defendants' Project Coordinator will meet or confer on a monthly basis.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within 30 days of lodging of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of \$3,000,000 in one of the following forms:

- (a) A surety bond guaranteeing performance of the Work;
- (b) One or more irrevocable letters of credit equalling the total estimated cost of the Work;
- (c) A trust fund;
- (d) A guaranty to perform the Work provided by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants; or
- (e) A demonstration that one or more of the Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).

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46. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 45(d) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guaranty, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this paragraph are inadequate, Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 45 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

XV. CERTIFICATION OF COMPLETION

47. Completion of the Remedial Action.

a. Within 90 days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants

shall so certify to the United States and shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer and the Settling Defendants' Project Coordinator shall certify that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the

Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken to complete the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been fully performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

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48. Completion of the Work

a. Within 90 days after Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall ^{deleted: "so certify to the US by"} submit a written report by a registered professional engineer stating ^{deleted: "certifying"} that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information including the possibility of fines and imprisonment for knowing violations."

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for

performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent Certification of Completion by Settling Defendants, and after a reasonable opportunity for review and comment by the State, that the Work has been fully performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XVI. EMERGENCY RESPONSE

49. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from or at the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 50, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project

Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA Emergency Response Unit, Region IV. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

50. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVII. REIMBURSEMENT OF RESPONSE COSTS

51. Within 30 days of the effective date of this Consent Decree, Settling Defendants shall pay to the United States \$_____, in the form of a certified check or checks made

payable to "EPA Hazardous Substance Superfund," and referencing CERCLA Number TJB04D673 and DOJ Case Number 90-11-3-104A in reimbursement of Past Response Costs. The Settling Defendants shall forward the certified check(s) to the United States Environmental Protection Agency, Region IV, ATTENTION: Superfund Accounting, P.O. Box 100142, Atlanta, Georgia 30384 and shall send copies of the check(s) to the United States as specified in Section XXVII (Notices and Submissions).

52. Settling Defendants shall reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States. From time to time, the United States will send Settling Defendants a bill requiring payment that includes EPA's certified Agency Financial Management System summary data (SPUR Report) or such other summary or accounting as certified by EPA, which includes all direct and indirect costs incurred by EPA and DOJ and their contractors. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 53. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 51.

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53. Settling Defendants may contest payment of any Future Response Costs under Paragraph 52 if they determine that the United States has made an accounting error or if they allege

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that a cost item that is included represents a cost that is inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objections shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs in the manner described in Paragraph 51. Simultaneously, the Settling Defendants shall establish an interest bearing escrow account in a bank duly chartered in the State of Georgia and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If

the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendants shall direct the escrow holder to remit the escrowed funds (with accrued interest) to the United States in the manner described in Paragraph 50. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall direct the escrow holder to remit payment for that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 50; Settling Defendants shall be disbursed the balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution), shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

54. In the event that the payments required by paragraph 50 are not made within 30 days of the effective date of this Consent Decree or the payments required by paragraph 52 are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants' shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The interest on Past Response Costs shall begin to accrue on the effective date of the Consent

Decree. The interest on Future Response Costs shall begin to accrue 30 days after the Settling Defendants' receipt of the bill. Payments made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section.

XVIII. INDEMNIFICATION AND INSURANCE

55. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and

settlement arising from, or on account of, claims made against the United States based on acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any contractor shall be considered to be an agent of the United States.

56. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of the Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

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date of this CD"

57. No later than 15 days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 48.b of Section XV (Certification of Completion) comprehensive general liability and automobile insurance with limits of \$3,000,000, combined single limit naming as insured the United States. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of such policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XIX. FORCE MAJEURE

58. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants or of any entity controlled by Settling Defendants, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirements that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring; and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

59. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally ^{deleted: "by telephone"} EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region IV, within

48 hours of when Settling Defendants first knew or should have known that the event might cause delay. Within 5 days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure for that event. Failure to comply with the requirements set forth above shall preclude Settling Defendants from asserting any claim of force majeure for that event. Settling Defendants shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

60. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected

by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

61. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 58 and 59, above. If Settling Defendants carry this

burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

62. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree and shall apply to all provisions of this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

63. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless such period is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party ^{deleted: "notice"} sends the [^] other parties a written Notice of Dispute.

64. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal

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negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants.

b. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 64 or 65.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 64 or 65, the Parties shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 64 and 65.

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65. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of response actions performed pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD or any of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, EPA may allow submission of supplemental Statements of Position by the Parties to the dispute.

b. The Director of the Waste Management Division, EPA Region IV, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 65.a. This decision shall be binding upon the

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paragraph

Settling Defendants subject only to the right to seek judicial review pursuant to Paragraphs 65.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 65.b shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendants with the Court and served on all parties within 10 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be the administrative record compiled pursuant to Paragraph 65.a.

66. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 64, the Waste Management Division Director, EPA Region IV, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on all Parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

b. Notwithstanding Paragraph L of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

67. The invocation of formal dispute resolution procedures under this Section shall not of itself extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree not directly in dispute unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in

Paragraph 76. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

68. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 69 and 70 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

69. a. The following stipulated penalties shall be payable per violation per day to the United States for failure to submit timely or adequate documents identified in Subparagraph b of this Paragraph:

<u>Penalty Per Violation</u> <u>Per Day</u>	<u>Period of Noncompliance</u>
\$4,000	1st through 14th days
\$6,000	15th through 30th days
\$8,000	31st day and thereafter

b. Documents

The RD Work Plan
The Preliminary Design
The Prefinal /Final Design
The RA Work Plan
The Operation and Maintenance Plan

69. a. The following stipulated penalties shall be payable per violation per day to the United States for failure to submit timely or adequate reports listed in subparagraph b of this Paragraph:

<u>Penalty Per Violation</u> <u>Per Day</u>	<u>Period of Noncompliance</u>
\$3,000	1st through 14th days
\$5,000	15th through 30th days
\$7,000	31st day and thereafter

b. Documents

i. Sampling and Analysis Plan (SAP)
ii. RD Health and Safety Plan
iii. Treatability Study Work Plan
iv. Treatability Study Sampling and Analysis Plan
v. Treatability Study Health and Safety Plan
vi. Intermediate Design
vii. Project Delivery Strategy
viii. Construction Management Plan
ix. Construction Quality Assurance Project Plan
x. Construction Health and Safety Plan/Contingency Plan
xi. Prefinal Inspection Report
xii. Remedial Action Report

xiii. Remediation Goal Verification Plan

c. Stipulated penalties in the amount of \$1000 per violation per day shall be payable to the United States for failure to submit timely or adequate monthly progress reports pursuant to Section XI (Reporting Requirements).

71. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 84 of Section XXII (Covenants Not to Sue by Plaintiff), Settling Defendants shall be liable for a stipulated penalty in the amount of \$3,000,000.

72. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

73. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

74. All penalties owed to the United States under this section shall be due and payable within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to Superfund Accounting, P.O. Box 100142, Atlanta, Georgia 30384 and shall reference CERCLA Number TJB04D673 and DOJ Case Number 90-11-3-104A. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions). *deleted: "Neither . . . Resolution)"*

75. *A* The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

76. Penalties shall continue to accrue as provided in Paragraph 72 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph C below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

77. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well ^{deleted: "late charges and"} as interest. Settling Defendants shall pay interest on the unpaid balance which shall begin to accrue on the date of demand made pursuant to Paragraph 73 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

deleted: "at the end of the thirty day period"

b. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).

78. Settling Defendants agree that no payments made under this Section shall be tax deductible for Federal tax purposes.

XXII. COVENANTS NOT TO SUE BY PLAINTIFF

79. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 80, 81 and 83 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 51 of Section XVII (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 48.b of Section XV (Certification of Completion).

These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

80. United States' Pre-certification reservations.

Notwithstanding any other provisions of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the State; or (2) to reimburse the United States for additional costs of response if, prior to certification of completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to the United States are discovered, or ~~deleted~~ "after entry of the CD"
- (2) information is received, in whole or in part, after the entry of this Consent Decree,

and these previously unknown conditions or this information, together with any other relevant information, indicate that the Remedial Action is not protective of human health or the environment.

81. United States' Post-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response action relating to the Site; or (2) to reimburse the United States for additional costs of response if, subsequent to certification of completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to the United States, are discovered after the Certification of Completion, or
- (2) information is received, in whole or in part, after the Certification of Completion,

and these previously unknown conditions or this information indicate that the Remedial Action is not protective of human health or the environment.

82. For purposes of Paragraph 80, the information previously received by and the conditions known to the United State shall include only that information and those conditions set forth in the Record of Decision and the administrative record supporting the Record of Decision. For purposes of Paragraph 81, the information previously received by and the conditions known to EPA ^{deleted: "United States"} shall include only that information and those conditions set forth in the Record of Decision, ^{deleted: "for the Site"} the

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administrative record supporting the Record of Decision, and any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

83. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 79. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

- (1) claims based on any failure by Settling Defendants to meet any requirement of this Consent Decree;
- (2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- (3) liability for damages for injury to, destruction of, or loss of natural resources;
- (4) liability for response costs that have been or may be incurred by any federal agencies which are trustees for natural resources and which have spent, or may in the future spend, funds relating to the Site;
- (5) criminal liability;

(6) liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

(7) liability for costs which the United States will incur related to the Site but which are not within the definition of Future Response Costs.

84. In the event EPA determines that Settling Defendants have failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that the Settling Defendants failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVII (Reimbursement of Response Costs).

85. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY SETTLING DEFENDANTS

86. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, or 113 or any other provision of law, any claim against any department, agency or instrumentality of the United States related to the Site, or any claims arising out of response activities at the Site. However, the Settling Defendants reserve, and this Consent Decree is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (not including oversight or approval of the Settling Defendants' plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

87. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding

sentence shall not be construed to waive or nullify any rights than any person not a signatory to this Consent Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

88. With regard to claims for contribution against Settling Defendants for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

89. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

90. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall

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notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

91. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claimsplitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXII (Covenants Not to Sue by Plaintiff).

XXV. ACCESS TO INFORMATION

92. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also

make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

93. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) of CERCLA, and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standard of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document.

record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

94. No claim of confidentiality shall be made with the respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXVI. RETENTION OF RECORDS

95. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 48.b of Section XV (Certification of Completion), each Settling Defendant shall preserve and retain all records and documents in its possession or control that relate in any manner to the performance of the Work or the liability of any person for response action conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendants' receipt of EPA's notification

pursuant to Paragraph 48.b Section XV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

96. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no document, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

97. Each Settling Defendant hereby certifies, individually, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3004 of RCRA.

XXVII. NOTICES AND SUBMISSIONS

98. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-3-104A

and

Director, Waste Management Division
United States Environmental Protection Agency
Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

As to EPA:

Ralph Howard
EPA Project Coordinator
United States Environmental Protection Agency
Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

As to the Settling Defendants:

[Name]
Settling Defendants' Project Coordinator:
[Address]

XXVIII. EFFECTIVE DATE

99. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXIX. RETENTION OF JURISDICTION

100. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XX (Dispute resolution) hereof.

XXX. APPENDICES

101. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the description of the Site.

"Appendix D" is the complete list of the Settling Defendants.

XXXI. COMMUNITY RELATIONS

102. Settling Defendants shall propose to EPA the level to which they choose to participate in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA in providing information regarding

the Work to the public. As requested by EPA, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXII. MODIFICATION

103. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendants. All such modifications shall be made in writing.

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104. No material modifications shall be made to the SOW

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the RDWP
and
the RAWP

without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW, the Remedial Design Work Plan, and the Remedial Action Work Plan that do not materially alter those documents may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants. A copy of any such modifications shall be filed with the Court.

105. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

106. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

107. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIV. SIGNATORIES/SERVICE

108. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the

terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

109. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

110. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS _____ DAY OF _____, 1991.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. ABCO Industries, Ltd., et al., relating to the Medley Farm Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

Richard B. Stewart
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Adam M. Kushner
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

[Name]
Assistant United States Attorney
District of South Carolina
U.S. Department of Justice
[Address]

Ray Ludwiszewski
Acting Assistant Administrator for
Enforcement
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460

Lawrence Groner
Office of Enforcement
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460

Greer C. Tidwell
Regional Administrator, Region IV
U.S. Environmental Protection
Agency
345 Courtland Street, N.E.
Atlanta, Georgia 30365

Elaine G. Levine
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. ABCO Industries, Ltd. et al., relating to the Medley Farm Superfund Site.

Type name of entity

Date: _____

By: _____
Title: _____

Attest:

By: _____
Title: _____

(CORPORATE SEAL)

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____
Title: _____
Address: _____

Note: A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.